

Appln. No. 10/720,625
Docket No. GP-302436 (GM2-0082)

REMARKS / ARGUMENTS

Status of Claims

Claims 1-18 are pending in the application. Claims 11-18 have been withdrawn from consideration. Claims 1-10 are rejected.

Applicant has amended Claim 1 and added new Claim 19, leaving Claims 1-19 pending in the application upon entry of the present Amendment.

Applicant respectfully submits that the rejections under 35 U.S.C. §103(a) have been traversed, that no new matter has been entered, and that the application is in condition for allowance.

Election/Restriction Requirement

The Examiner acknowledges that Claim 1 is generic, but nonetheless maintains that since Claim 1 is not allowable the Species requirement is maintained and is proper.

Applicant herein provides amendments and clarifying remarks, for consideration by the Examiner, to traverse the rejections under 35 U.S.C. §103(a). In the event that Claim 1 is deemed allowable, Applicant respectfully requests, in accordance with MPEP §809.04, the rejoining of Claims 11-18 and examination thereof.

Objections to the Specification

The Examiner objected to the specification for reasons relating to informalities appearing in Claim 10, indicating that in line 6, the first "and" should be deleted (because "and" is also found on the previous line), and required appropriate correction.

Applicant respectfully submits that in the response to office action dated September 29, 2004, Applicant amended Claim 10 as requested by the Examiner to correct for the informalities.

The listing of claims provided herein reflects the present status of Claim 10 in accordance with the amendment made in the September 29, 2004, response by Applicant.

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Accordingly, Applicant respectfully requests reconsideration and withdrawal of this objection.

Rejections Under 35 U.S.C. §103(a)

Claims 1, 3, 7, 8 and 10, stand rejected under 35 U.S.C. §103(a) as being unpatentable over Muselli et al. (U.S. Patent No. 5,213,383, hereinafter Muselli). The Examiner acknowledges that Muselli does not disclose that the Muselli side telescoping members (6, 7) are operable by an actuator, but alleges that it would have been obvious to operate the side telescoping members *in the same manner as* the forward telescoping members (4). Paper 20041018, page 3 (emphasis added).

Claims 2, 4, 5, 6 and 9 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Muselli in view of Wathen (U.S. Patent No. 3,848,914, hereinafter Wathen).

The Examiner acknowledges that Muselli does not disclose certain features of the claimed invention, and looks to Wathen to cure these deficiencies.

Applicant traverses these rejections for the following reasons.

Applicant respectfully submits that the obviousness rejection based on the References is improper as the References fail to teach or suggest each and every element of the instant invention. For an obviousness rejection to be proper, the Examiner must meet the burden of establishing a prima facie case of obviousness. *In re Fine*, 5 U.S.P.Q.2d 1596, 1598 (Fed. Cir. 1988). The Examiner must meet the burden of establishing that all elements of the invention are taught or suggested in the prior art. MPEP §2143.03.

Regarding Claims 1, 3, 7, 8 and 10

Applicant has amended Claim 1 to now recite, inter alia, "... wherein *the actuator is responsive to an impending impact at the vehicle such as to cause the laterally extending bumper segment to slideably extend, thereby affording vehicle protection in response to a side or near side impact.*" Support for the claim amendment may be found in the specification as originally filed at paragraphs [0013] and [0017]. No new matter

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has been added.

Dependent claims inherit all of the limitations of the parent claim.

In contrast to the instant invention, Applicant submits that Muselli is directed to a telescoping support that can slide and rotate slightly in relation to a pair of guides built into the truck chassis; during these movements it activates a set of microswitches connected to equipment designed *to stop the vehicle or to signal the presence of the obstacle* to the driver. Col. 1 lines 48-58, Col. 2 lines 58-65 (emphasis added). In operation, the Muselli telescoping support 4 is regulated by hydraulic pistons 9 to bring bumper 5 to the desired distance from the load on the forks, and lateral telescopic arms 6 are manually adjusted. Col. 2 lines 22-57.

Contrary to the instant invention, Applicant submits that Muselli discloses a safety system that *stops the vehicle or alerts the driver* in response to an *already extended* longitudinally extendable support sliding or rotating to actuate microswitches. In Muselli, the longitudinally extendable support is *extended at the onset of vehicle operation prior to any indication of an impact and not in response to an impending impact*, which is substantially different from the claimed invention.

If Applicant were to accept the Examiner's position that it would have been obvious to operate the side telescoping members *in the same manner as* the forward telescoping members (4), then it necessarily follows that Muselli, as modified by the Examiner, would result in longitudinally and laterally extendable supports that are extended *prior to any indication of impending impact and not in response to an impending impact*, which is substantially different from the claimed invention.

In Muselli, the action-reaction relationship is *actual impact (action)* and then *activation of microswitches by the sliding or rotating of the extended support (reaction)*. In the instant invention, the action-reaction relationship is *impending impact (action)* and then *activation of laterally extendable bumper segments (reaction)*.

While Muselli is *reactive* to a collision, the instant invention is *proactive* to an impending collision, which is a substantially different invention.

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In considering Muselli in its entirety, Applicant submits that Muselli fails to teach or suggest "... wherein *the actuator is responsive to an impending impact at the vehicle such as to cause the laterally extending bumper segment to slideably extend, thereby affording vehicle protection in response to a side or near side impact*", as claimed in the instant invention.

By asserting Muselli absent a further teaching or suggestion to arrive at the claimed invention, Applicant submits that Muselli fails to teach or suggest each and every element of the claimed invention, and respectfully submits that the Examiner has not established a prima facie case of obviousness for each and every element of the claimed invention.

Regarding Claims 2, 4, 5, 6 and 9

Claims 2, 4, 5, 6 and 9, are all dependent from Claim 1, and Applicant has remarked above how Claim 1 is patentable over Muselli.

In combining Wathen with Muselli, the Examiner looks to cure the deficiencies of Muselli, which include: the actuator being a motor actuator, a pyrotechnic actuator, or a combination of a motor, hydraulic and pyrotechnic actuator; and, the system further comprising a sensor to extend the bumper over a threshold speed or upon impending impact. Paper 20041018, pages 4-5.

In view of the absence of a teaching or suggestion in Muselli to arrive at the invention of Claims 1, 3, 7, 8 and 10, the absence of any remarks by the Examiner as to how Wathen may be combined with Muselli to arrive at the invention of Claims 1, 3, 7, 8 and 10, and the fact that Claims 2, 4, 5, 6 and 9 all depend from Claim 1, Applicant respectfully submits that the Examiner has not met the burden of establishing how the combination of Muselli and Wathen teaches or suggests each and every element of the claimed invention.

Furthermore, Applicant submits that Wathen teaches only a front and rear *longitudinally* extendable bumper system that assists in reducing damage or injury to the protected vehicle or passengers in the event of a *head-on collision*, the bumper system being extendable upon a sensed impending collision. (Col. 2 lines 18-34) (emphasis

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added). As shown in Figure 5 of Wathen, the end result of employing only a *longitudinally* extendable bumper system is that *side protection* to the steering mechanism of the vehicle is compromised when the bumper system is in the extended position and the vehicle is involved in a *side impact or near side impact*, which in and of itself is substantially different from the claimed invention.

Applicant respectfully submits that an advantage of the instant invention, which is not recognized by either Muselli or Wathen, is that a laterally extendable bumper system provides *added protection* to the steering mechanism of the vehicle, *as opposed to compromised protection*, in the event that the vehicle is involved in a *side or near side impact* as discussed at paragraph [0017] of the instant application. Muselli and Wathen not only don't recognize the problem associated with steering mechanism protection during *side or near side impacts*, but also offer no suggestion or teaching to solve or address the problem.

While not specifically shown in Muselli, it is well recognized in the art of fork lift trucks that steering mechanisms are employed at the rear of the truck, thereby offering a high degree of maneuverability for positioning loads placed on the forks at the front of the truck. As such, the front extendable bumper system of Muselli does not protect the steering mechanism of the truck, and the conspicuous absence of any teaching in Muselli to the contrary does not and cannot lead one skilled in the art to arrive at the claimed invention, and Wathen does not cure this deficiency. Without more, it is impermissible for the Examiner to read into Muselli a teaching or suggestion that is not found in Muselli.

In view of the combination of Muselli and Wathen failing to recognize a problem recognized and solved by the instant invention, Applicant submits that Muselli and Wathen fail to meet the standards of a prima facie case of obviousness, and therefore cannot properly be used for rejection on those grounds.

In view of the foregoing, Applicant submits that the References fail to teach or suggest each and every element of the claimed invention, disclose a substantially different invention from the claimed invention and fail to recognize or address a problem

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recognized and solved by the claimed invention, and therefore cannot properly be used to establish a prima facie case of obviousness. Accordingly, Applicant respectfully requests reconsideration and withdrawal of this rejection.

In light of the forgoing, Applicant respectfully submits that the Examiner's rejections under 35 U.S.C. §103(a) have been traversed, and respectfully requests that the Examiner reconsider and withdraw these rejections.

Regarding Claims 11-18

Applicant has remarked above regarding the patentability of generic Claim 1, and has also herein remarked that neither Muselli nor Wathen, taken singly or in combination, teach or suggest the claimed invention. Accordingly, Applicant submits that Claims 11-18 are also now in condition for allowance, and herein respectfully requests rejoinder and full examination thereof.

Regarding Newly Added Claim 19

Applicant has added independent Claim 19 that is directed to subject matter supported by the specification and drawings as originally filed. No new matter has been added. In view of the remarks above regarding Claims 1-10, Applicant submits that Claim 19 is directed to allowable subject matter and respectfully requests notice thereof.

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The Commissioner is hereby authorized to charge any additional fees that may be required for this amendment, or credit any overpayment, to Deposit Account No. 06-1130.

In the event that an extension of time is required, or may be required in addition to that requested in a petition for extension of time, the Commissioner is requested to grant a petition for that extension of time that is required to make this response timely and is hereby authorized to charge any fee for such an extension of time or credit any overpayment for an extension of time to the above identified Deposit Account.

Respectfully submitted,

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